

1 STATE OF CALIFORNIA

2 DEPARTMENT OF INDUSTRIAL RELATIONS

3  
4 DECISION ON ADMINISTRATIVE APPEAL

5 IN RE: PUBLIC WORKS CASE NO. 99-046

6 NORTHRIDGE EARTHQUAKE RECOVERY PROJECT

7 CALIFORNIA STATE UNIVERSITY, NORTHRIDGE

8 INSPECTION WORK

9  
10 I. INTRODUCTION AND PROCEDURAL HISTORY

11 On November 19, 1999, the Department of Industrial  
12 Relations (Department) issued a public works coverage  
13 determination that Ron Barr, Ashton Durand, Cleveland Harris  
14 and Stephen Risley ("Inspectors"), hired by Jenkins, Gales and  
15 Martinez ("JGM") as inspectors under JGM's subcontract  
16 agreement with Daniel, Mann, Johnson and Mendenhall ("DMJM"),  
17 were entitled to the payment of prevailing wages for their  
18 work on the Northridge Earthquake Recovery Project ("Project")  
19 pursuant to Labor Code sections 1720(a) and 1772.

20 On January 12, DMJM/JGM requested reconsideration of this  
21 determination. Because the California Code of Regulations  
22 only provides for appeals, the Director will treat DMJM/JGM's  
23 January 12, 2000 request for reconsideration as an appeal  
24 under California Code of Regulations, tit. 8, Regulation  
25 16002.5.  
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27 The Inspectors responded to the appeal on February 24,  
28 2000. On April 19, 2000, DMJM/JGM, as part of its request for

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1 reconsideration, asked the Department to review several  
2 coverage determinations issued by the Department in the early  
3 1990's. No other responses have been received.

## 4 II. ISSUES AND CONCLUSIONS ON APPEAL

5 DMJM/JGM argue that because Labor Code section 1720 and  
6 the Public Contracts Code consistently define "public works"  
7 as involving construction, alteration, repair or improvement,  
8 their contracts for inspection of the construction project  
9 fall outside the definition of a public works. Therefore,  
10 according to their argument, the work of the Inspectors would  
11 not be covered. DMJM/JGM also argue that they are not  
12 "contractors" or "subcontractors" and therefore the Inspectors  
13 are not employees hired in the execution of a contract for  
14 public works. DMJM/JGM also assert that the Inspectors are  
15 not "workmen" as defined by Labor Code section 1723. They  
16 submit several early Department public works coverage  
17 determinations in support of the proposition that inspectors  
18 are not covered employees.

20 In response, the Inspectors argue that DMJM/JGM's  
21 interpretation of Labor Code section 1720 is too narrow in  
22 scope. They argue, had the Legislature intended to exclude  
23 "service contracts" as covered work, it would have done so  
24 under Labor Code section 1720.4, which provides exclusions for  
25 certain categories of work from the public works definition.  
26 In addition, they argue that, because their work plays a vital  
27 role in the successful completion of the public work, they are  
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1 workers under Labor Code section 1772 who are employed by .  
2 subcontractors in the execution of a public works contract.  
3 In furtherance of this argument, they point out the definition  
4 of contractors and subcontractors under Labor Code section  
5 1722 does not exclude the classification of "inspectors."  
6 Finally, they argue that since 1977 the Department has  
7 included building construction inspectors in the prevailing  
8 wage determinations under Labor Code sections 1770, 1773 and  
9 1773.1.

10 For the reasons discussed below, I find that the Project  
11 is a public work. I further find that DMJM and JGM are  
12 contractors and/or subcontractors and that the Inspectors are  
13 workers employed by JGM in the execution of this public work.  
14 For this reason, under section 1772, the Inspectors are deemed  
15 to be employed upon a public work and therefore prevailing  
16 wages must be paid to them.

### 18 III. RELEVANT FACTS

19 The underlying facts are not in dispute. DMJM was  
20 awarded a construction management contract by California State  
21 University, Northridge ("CSUN") to coordinate and oversee the  
22 Project. The purpose of the Project was to reconstruct and  
23 repair major earthquake damage suffered by the State  
24 University in the 1994 Northridge earthquake. The Federal  
25 Emergency Management Agency provided funding to CSUN for the  
26 Project.  
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1 As part of its contract with CSUN, DMJM was to provide  
2 "construction inspection for compliance with applicable  
3 building codes, including ICBO standards, and requirements of  
4 the construction documents." This portion of DMJM's scope of  
5 work was subcontracted to JGM. Both DMJM and JGM have  
6 supplied copies of the "Project Action Sheets" (two pages) and  
7 several excerpts from the DMJM/JGM contract (identified  
8 internally as "Exhibit A", pp. 5-9 and "Exhibit A-Revised,  
9 Section B, Amendment No. 6," Bate Stamped 153-155), which set  
10 forth the duties and responsibilities of the Chief Inspector  
11 and Project Inspectors. These documents are collectively  
12 attached hereto as Exhibit 1 to this Decision.<sup>1</sup> Generally,  
13 the JGM inspectors were to ensure that all work is completed  
14 in strict compliance with the plans and specifications, issue  
15 citations for building code violations and verify that all  
16 tests required by the construction documents are completed.

18 Pursuant to this contract with DMJM, JGM hired Ron Barr,  
19 Ashton Durand, Cleveland Harris and Stephen Risley as Project  
20 Inspectors with the title Inspector II. Later, Mr. Risley was  
21 promoted to Chief Inspector.

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26 <sup>1</sup>It should be noted that neither side has provided this Department with  
27 complete copies of the contract between CSUN and DMJM, and DMJM and JGM.  
28 This Decision on Administrative Appeal accepts the representation of the  
parties that indeed these excerpts set forth the scope of work at issue  
herein.

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1           1.     The definitions of contractor and  
2                     subcontractor, as well as the contract  
3                     documents themselves, require a finding that  
                   DMJM is a contractor and JGM is a  
                   subcontractor.

4           Webster defines a contractor as "one who contracts"  
5           (Webster's Third New International Dictionary, Unabridged,  
6           1967). Webster also defines a subcontractor as "[a] business  
7           firm that continues to perform part... of another's  
8           contract...." (Id.) Under these definitions, DMJM is a  
9           contractor and JGM is a subcontractor. As mentioned above,  
10          DMJM was awarded the contract as project manager for the  
11          reconstruction of the State University. The portion of this  
12          contract calling for inspections was contracted out to JGM.

13          Additionally, the documents supplied by the parties to  
14          this Appeal, which set forth the scope of the work of  
15          inspectors, refer to inspectors as employees of the contractor  
16          or subcontractor. (See Exhibit 1 and the document identified  
17          therein internally with Bate Stamp No. 153.)

18          Appellants argue that since their contracts involve  
19          construction management duties, including inspection and  
20          coordination of the building contractor's work on the public  
21          works project as opposed to the physical building of the  
22          project, they are not "contractors" or "subcontractors." They  
23          press for a narrow definition of these words to include only  
24          those contractors or subcontractors who contract to build the  
25          public work. The prevailing wage statutes do not provide such  
26          a narrow definition, however.  
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1 Labor Code section 1722.1, enacted in 1978, simply states  
2 that contractors and subcontractors include the licensees,  
3 officers, agents and representatives of contractors and  
4 subcontractors. This statute does not state that contractors  
5 and subcontractors include only those persons or entities  
6 contracted to build the public work.

7 2. Protection under the public works law does not  
8 extend only to employees engaged in the actual  
9 building work.

10 It should first be noted that "[T]he overall purpose of  
11 the prevailing wage law is to protect and benefit employees on  
12 public works projects." (Lusardi Const. Co. v. Aubrey (1992)  
13 1 Cal.4th 976.) Labor Code section 1772 extends this  
14 protection to "[W]orkers employed by contractors or  
15 subcontractors in the execution of any contract for public  
16 work..."

17 Therefore, the question is not whether the appellants'  
18 contracts require construction, but whether they involve work  
19 by employees of contractors or subcontractors in the execution  
20 of a public works contract. A review of the duties and  
21 responsibilities of the Inspectors outlined in Exhibit 1 of  
22 this Decision requires a finding that these Inspectors perform  
23 a vital role in the successful execution of the Project.

24 The fact the Public Contracts Code makes a distinction  
25 between "construction contracts" (Public Contracts Code  
26 section 10701) and "service contracts" (Public Contracts Code  
27 section 10707) provides no support for DMJM/JGM's position.  
28

1 These code sections pertain specifically to the authority of  
2 the California State Universities to enter into construction  
3 and service contracts. They do not address the question  
4 whether workers hired in the execution of these contracts  
5 should be paid prevailing wages. Indeed, as noted above, this  
6 is the very purpose of the prevailing wage law.

7           3. Prevailing wages are to be paid to all workers  
8           employed on public works, not just those who  
9           are laborers, workmen or mechanics.

10           A finding that the Inspectors hired by JGM are to be paid  
11 prevailing wages is consistent with the mandate in Labor Code  
12 section 1771 that requires that prevailing wages be paid to  
13 "all workers...employed on public works." This code section  
14 was reviewed by the Attorney General in 70 Ops.Cal.Atty.Gen.  
15 92 (1987). Here, the Attorney General was asked whether Labor  
16 Code section 1771 applies to employees of a private  
17 engineering firm who contracted to be the City Engineer. The  
18 Attorney General answered in the affirmative: "The prevailing  
19 wage provisions of Labor Code section 1771 apply to the  
20 employees of an engineering firm which contracts with a city  
21 to perform the duties of a City Engineer, except with respect  
22 to such duties which do not qualify as a public work."

23           The scope of work required to be performed by the  
24 employees of the private engineering firm included inspections  
25 and plan checking as well as survey work. Since the Project  
26 in this case qualifies as a public work and, since the work  
27 involves on-site inspections, the reasoning in this Attorney  
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1 General Opinion requires a finding that the employees of JGM  
2 must be paid prevailing wages under Labor Code section 1771.

3 Labor Code section 1723 states that the definition of  
4 "workman" includes a laborer, workman or mechanic. This code  
5 section does not exclude other types of workers, including  
6 inspectors and surveyors, as was made clear in the 1987  
7 Attorney General Opinion referred to above. The Inspectors in  
8 this case are physically present on the public works site to  
9 ensure compliance with the plan specifications and code  
10 requirements. They are therefore workers employed on a public  
11 work.  
12

- 13 4. The previous determinations submitted and  
14 relied on by DMJM/JGM in support of their  
15 argument have no precedential value and  
16 therefore are irrelevant.

17 DMJM/JGM's reliance on earlier Department determinations  
18 as precedent in support of their position is misplaced.  
19 Government Code section 11425.60, subsections (b) and (c)  
20 allow an administrative agency to select those decisions that  
21 contain significant legal or policy determinations to be  
22 designated as precedential. An index of these significant  
23 precedential decisions is to be publicized in the California  
24 Regulatory Notice Register (CRNR). Government Code sections  
25 11425.10(a)(7) and 11425.60(a) state clearly that no agency  
26 decision can be relied on unless it has been designated as  
27 precedential.  
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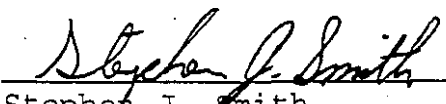
1 Pursuant to the above code sections, in 1999 the  
2 Department filed with the CRNR an index of its precedential  
3 determinations. None of the determinations submitted and  
4 relied on by DMJM/JGM were selected as precedential  
5 determinations. Hence their reliance on these earlier  
6 determinations is of little use in this decision.

7 Additionally, it should be recognized that since 1977  
8 prevailing wage determinations have existed for "Building  
9 Construction Inspectors." This classification is found in  
10 "General Prevailing Wage Determinations Made by the Director  
11 of Industrial Relations pursuant to California Labor Code Part  
12 7, Chapter 1, Article 2, Sections 1770, 1773, and 1773.1 for  
13 Commercial, Building Highway Construction and Dredging  
14 Projects." This Department has recently confirmed its  
15 obligation to assure enforcement of prevailing wages for this  
16 classification of workers. In letters to Operating Engineers'  
17 union representatives, this Department has confirmed its  
18 commitment to enforce this determination wherever it is  
19 applicable (attached as Exhibit 2).  
20

21 V. CONCLUSION

22 For the reasons stated above, the initial coverage  
23 determination, dated November 19, 1999, is hereby sustained.  
24

25 DATED: 6/9/00

26   
27 Stephen J. Smith  
28 Director

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